

GEORGIA STATE FINANCING & INVESTMENT COMMISSION
PROCEDURES FOR SUSPENSION AND DEBARMENT
OF DESIGN PROFESSIONALS, CONSULTANTS, CONTRACTORS, AND VENDORS

The policy and procedures to be utilized for suspension and debarment of architects, engineers, design professionals, consultants, contractors, suppliers, and vendors are as follows:

(A) *Application.* This policy and procedure applies to all debarment or suspensions of persons, firms, partnerships, joint ventures, or corporations from consideration for award of contracts offered by the Georgia State Financing & Investment Commission (GSFIC). It applies to all architects, engineers, design professionals, consultants, contractors, construction managers, program managers, service providers, suppliers, subcontractors, and vendors, including their owners, principals, and officers, both individually and in connection with their firms (hereinafter collectively referred to as "Contractors"), doing business, directly or indirectly, with GSFIC.

(B) *Causes for Suspension or Debarment.* The causes for suspension or debarment include the following:

(1) Conviction or entry of a plea of guilty, *nolo contendere*, or first offender treatment for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract, or for conspiracy, contract, or combination in restraint of trade or of free and open competition in any transaction with a state, the United States, or any state or federal agency or instrumentality or political subdivision thereof.

(2) Conviction or entry of a plea of guilty, *nolo contendere*, or first offender treatment under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or honesty that, seriously, directly, and currently affects responsibility as a State Contractor.

(3) Conviction or entry of a plea of guilty, *nolo contendere*, or first offender treatment under State or Federal antitrust statutes arising out of the submission of bids or proposals.

(4) Violation of contract provisions of such character that is regarded to be so serious as to justify debarment action, as described in either of the following:

(a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform, or unsatisfactory performance, that is caused by acts beyond the control of the Contractor shall not be considered to be a basis for debarment.

(5) Any other cause so serious and compelling as to affect responsibility as a Contractor, including debarment by another governmental entity.

(6) Any violation of the conflict of interest provisions of Official Code of Georgia, Annotated, Sections §45-10-20 through §45-10-28.

(C) Initiation of Action.

(1) The following individuals may make a written request to the Deputy Director, Construction Division, of GSFIC to initiate formal suspension and debarment of a Contractor:

(a) The president, vice president, director, or deputy director of any state agency or authority for which GSFIC is performing or has performed construction services. If that unit has a legal advisor, the request should be routed through the legal advisor for an initial determination as to factual sufficiency prior to being forwarded to GSFIC.

(b) Any program manager, project manager, or project director of a state construction project for GSFIC, Department of Administrative Services, the Board of Regents of the University System of Georgia, or the Georgia Building Authority.

(c) A program manager or construction manager under contract to GSFIC, but only for Contractors within the scope of the project(s) under the contract.

(2) The Deputy Director may, based upon a review of the request pursuant to (D)(1) below, either (i) deny the request to initiate debarment action and return it to the requestor; or (ii) accept the request and proceed with preliminary suspension and initiation of a debarment action.

(D) Suspension.

(1) *Initiation.* The Deputy Director, Construction Division, upon receipt of a written request for suspension and debarment, after consultation with appropriate procurement or facilities officers, and institutional or agency staff, according to the Deputy Director's discretion, shall determine whether reasonable cause exists for debarment as hereinafter set forth. If such reasonable cause exists, a Contractor shall be suspended from all new contracts with GSFIC and a notice of suspension shall be sent to the suspended Contractor. Such notice from the Deputy Director to the Contractor shall state the following:

(a) The suspension is based upon the Deputy Director's determination that reasonable cause for debarment exists and that the suspension shall continue for the period, not to exceed 60 days, that it takes to complete an investigation, initiate

and determine whether to issue a debarment. The suspension shall also continue during any appeal of a debarment decision.

(b) Bids or proposals will not be solicited from the suspended person or firm, and, if they are received, they will not be considered during the period of suspension.

(c) The person or firm suspended may request a preliminary hearing in accordance with this procedure.

(2) Preliminary Hearing Panel. The Deputy Director, Construction Division, shall appoint a Preliminary Hearing Panel consisting of the Deputy Director or designee, and two other persons.

(3) Effect of Decision. A Contractor or prospective Contractor is suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals. The suspension may be remitted by the Director, Construction Division, or by a court of law, but otherwise shall only be ended when the suspension has been in effect for 60 days or a debarment decision has been issued.

(E) *Debarment*. The chair of the Preliminary Hearing Panel shall, after a review of the case file, send written notice of the proposed debarment action by certified mail, return receipt requested, to the Contractor. This notice shall accomplish the following:

(1) State that debarment is being considered.

(2) Set forth the reasons for the action.

(3) State that a hearing will be held, if the Contractor so requests in writing, provided that such request is received by the Deputy Director, Construction Division, within ten days after the Contractor receives notice of the proposed action.

(4) State that the Contractor may be represented by counsel of the Contractor's choosing at the Contractor's sole expense.

(F) *Request for Hearing*. A Contractor who has been notified of a proposed debarment action may request in writing that a hearing be held. Such request must be received by the Deputy Director within ten days of receipt of notice of the proposed action under Section E above. If no request is received within the ten-day period, a formal determination may be made as set forth hereinafter.

(G) *Authority of Preliminary Hearing Panel*. In the conduct of the hearing, the Preliminary Hearing Panel has, in addition to other powers, the power to effect the following:

(1) Hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such officer's own motions.

- (2) Require parties to state their positions with respect to the various issues in the proceedings.
- (3) Require parties to produce for examination those relevant witnesses and documents under their control, including exculpatory evidence.
- (4) Rule on motions and other procedural items or matters pending before such officer.
- (5) Regulate the course of the hearing and the conduct of the participants therein.
- (6) Receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony that are irrelevant, immaterial, or unduly repetitious.
- (7) Fix time limits for submission of written documents and matters before such officer.
- (8) Impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include the following:
 - (a) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.
 - (b) Excluding all testimony of unresponsive or evasive witnesses.
 - (c) Expelling any party or person from further participation in the hearing.
- (9) Take official notice of any material fact not appearing in the record if such fact is among the traditional matters of judicial notice.

(H) *Preliminary Hearing Procedures.*

- (1) Preliminary hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. The burden of proof is by a preponderance of the evidence, unless a higher standard is required by statute. The weight to be attached to evidence presented in any particular form shall be within the discretion of the preliminary hearing panel. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the preliminary hearing. The parties may stipulate the testimony that would be given by a witness if that witness were present. The preliminary hearing panel may require evidence to be presented in addition to that offered by the parties.
- (2) The preliminary hearing may be recorded but need not be transcribed except at the request and expense of the Contractor. A record of those present, identification of any written evidence, copies of all written statements, and a summary of the preliminary hearing shall be a sufficient record.

(3) Opening statements may be made; however, a party may waive this right.

(I) *Determination and Recommendation of the Preliminary Hearing Panel, Initial and Final Agency Decision.* The Preliminary Hearing Panel shall prepare a written determination of facts and a recommendation as to debarment to the Director, Construction Division. Copies shall be sent to the Deputy Director, the state agency involved, and to the Contractor. The Contractor shall have ten days in which to file an appeal of the Preliminary Hearing Panel's determination and recommendation. If no appeal is filed within the allotted time, the Director may render the Final Decision upon consideration of the Preliminary Hearing Panel's written determination and recommendation, and the matters contained in the record pursuant to paragraph H(2) above. If an appeal is filed, the Director, Construction Division, may thereafter, in his sole discretion, proceed as follows:

(1) The Director, Construction Division, upon receipt of an appeal, shall determine, in his sole discretion, whether the appeal hearing shall be held before the Director or referred to the Office of State Administrative Hearings (OSAH). If the appeal hearing is to be before the Director, the Director shall set a date and time for the hearing and may refer the case file to the Attorney General for legal representation of GSFIC. In the alternative, the Director may refer the matter to the Office of State Administrative Hearings as a contested case pursuant to O.C.G.A. §50-13-41(a)(1). The case file for an OSAH proceeding also may be referred to the Attorney General for representation of GSFIC. The Office of State Administrative Hearings will set the date, time, and place of hearing as prescribed by OSAH Rules.

(2) All appeal hearings, whether before the Director, Construction Division, of GSFIC or before OSAH, shall be conducted as a contested case pursuant to the Administrative Procedure Act, including but not limited to O.C.G.A. §50-13-13 and §50-13-15.

(3) The decision of an administrative law judge made after a hearing before the Office of State Administrative Hearings shall be the Initial Agency Decision as set forth in O.C.G.A. §50-13-41(d) and shall be subject to review by the Director, Construction Division, as set forth in O.C.G.A. §50-13-41(e). Whether the hearing is before the Director or whether the Initial Agency Decision of the administrative law judge is reviewed by the Director, the Director's decision thereupon shall be the final Agency Decision.

(J) *Effect of Debarment Decision.* A debarment decision shall take effect upon issuance by the Director, Construction Division, and receipt by the Contractor or Contractor's counsel of record. Contracts will not be executed and bids or proposals will not be solicited from the suspended person or firm, and, if bids or proposals are received, they will not be executed or considered during the period of debarment. After the debarment decision takes effect, the Contractor shall remain debarred until the debarment period specified in the decision [not to exceed five (5) years] expires.

(K) *Judicial Review, Requests for Reinstatement.* Upon issuance, the Director's final Agency Decision shall be the final agency decision in the matter and shall be subject to judicial review

as set forth in O.C.G.A. §50-13-19. Upon the completion of one-half of any debarment period, a debarred Contractor may request that the Director, Construction Division, remit the balance or any portion of the debarment and reinstate the eligibility of the debarred person or firm to contract with GSFIC by providing written documentation of the good cause and grounds therefor. The Director, Construction Division, in his sole and complete discretion regarding sufficient good cause, may grant, grant in part, or deny any such request for reinstatement. After any such request, the debarred Contractor may not make another request until after one year of the date of the decision on the most recent request for reconsideration.